

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

December 4, 2003

A meeting of the Board of Environmental Protection was held on Thursday, December 4, 2003, at the Holiday Inn / Ground Round facility in Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

**Board:** Nancy Anderson, Katharine Littlefield, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler and Matt Scott. Board member Ernest Hilton arrived at approximately 9:30a.m..

**Absent:** Irving Faunce and Virginia Plummer  
Note: There is one vacancy

<b><u>Staff:</u></b>	<u>Bureau of Land and Water Quality</u>	William Bullard
	<u>Bureau of Land and Water Quality</u>	Linda Kokemuller
	<u>Bureau of Remediation and Waste Mgmt</u>	Ed Antz
	<u>Bureau of Air Quality</u>	Kurt Tidd
	<u>Bureau of Air Quality</u>	Ron Severance
	<u>Bureau of Air Quality</u>	Jeff Crawford

**Others:** Dawn Gallagher, Commissioner  
Dennis Harnish, Assistant Attorney General  
Cynthia Bertocci, Executive Analyst  
Terry Hanson, Administrative Assistant

*(Meeting adjourned at approximately 3:30 p.m.)*

**I. DEPARTMENTAL**

**A. COMMISSIONER'S CORNER:** Commissioner Gallagher reported the following:

Budget – There is a 22 million-dollar shortfall in the Medicare budget. To close the budget gap, the Department will need to cut approximately \$150,000.00 over the next two years. The Department will journal general fund positions to dedicated and federal funds where appropriate as the first step toward addressing this deficit. If position cuts become necessary, the Department will target seasonal conservation aid positions first in an effort to avoid losing program positions. This Medicare shortfall is a one-time event and the Department is not expected to face additional budget cuts for FY 04 / 05.

Deputy Commissioner - Commissioner Gallagher introduced David Littell, formerly of Pierce Atwood, to the Board as the Department's Deputy Commissioner. In addition to David's work as an environmental attorney, he has been actively involved in Portland Trails, a non-profit urban land trust. The Commissioner noted for the Board that there are some issues which may come before the Board involving attorneys from Pierce Atwood which David will not be able to participate in.

Mr. Littell advised the Board that much of his work at Pierce Atwood involved working with EPA, DEP and the AG' Office to negotiate the clean-up of contaminated sites. In addition to his work with Portland Trails, he has also worked on economic development issues in Greater Portland. Mr. Littell indicated that he is looking forward to his work at the Department and with the Board.

**B. CHAIRMAN'S COMMENTS:**

DEP Staff Day - The Chair reminded Board members that December 11<sup>th</sup> is the date of the Department's annual staff day and the event is being held at the Augusta Civic Center

**C. EXECUTIVE ANALYST COMMENTS:**

Mere Point - Mr. Manahan, representing Friends of Mere Point, has submitted a letter of intent to appeal the Chair's Third Procedural Order. Written arguments will be submitted to the Board on December 10<sup>th</sup> and the Board will be asked to consider the appeal at its regular meeting on December 18<sup>th</sup>.

Hannum - Peggy McCloskey from the Attorney General's Office has been discussing procedural options with the parties regarding the recent court remand on the Hannum dock issue. One of the primary issues is the change in composition of the Board since the application was originally considered. Ms. McCloskey is expecting to receive feedback from the parties regarding the procedural options available to address the remand. The Department will be asking the Board to review the procedural options at its meeting on December 18<sup>th</sup>. Some options currently being considered are (a) hold a new hearing (b) have the Board members who participated in the original proceeding review the existing record and render a decision.

Board member Ziegler asked how many of the current Board members participated in the previous hearing process.

The Executive Analyst stated that four current Board members fully participated in the earlier proceeding and two members participated in a portion of the proceeding.

Draft Report to the Legislature – Also on the agenda for the December 18<sup>th</sup> meeting will be a request for approval of the draft annual report to the Legislature. Board member Faunce communicated his desire for the inclusion of two issues: (1) concerns about compliance with asbestos management rules during abatement activities at schools and the potential impacts to students, and (2) violations of hazardous waste management laws by well established businesses.

Cumulative Impact - The Department has produced a report to the Legislature on the topic of cumulative impact. Department staff will brief the Board at the Board's January 15<sup>th</sup> meeting.

<b>D. BOARD CALENDAR:</b>	Reviewed
<b>E. DEPARTMENTAL ORDERS:</b>	Reviewed
<b>F. EXECUTIVE SESSION:</b>	None

## **II CONSENT AGENDA ITEMS**

The Board voted (6-0-0-3) on a motion to approve as presented consent agenda items 1, 2, 3, 4, 5, 6, and 7.

*Board members Nancy Anderson, Katharine Littlefield, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler, and Matt Scott voted to support the motion. Board members Ernest Hilton, Virginia Plummer and Irving Faunce were absent. There is one vacancy.*

1. HUHTAMAKI FOODSERVICE, INC., Waterville – Administrative Consent Agreement (BAQ)
2. AGA REALTY, LLC, Portland - Administrative Consent Agreement (BAQ)
3. MICHAEL KOOB, Rangeley – Administrative Consent Agreement and Enforcement Order (BLWQ - Land)
4. HEMOND'S MOTO-X PARK, LLC, Minot – Administrative Consent Agreement and Enforcement Order (BLWQ-Land)
5. THOMAS DAVIS and CHARLES DAVIS, New Portland - Administrative Consent Agreement and Enforcement Order (BLWQ-Land)
6. R.J. ENTERPRISES, INC., Bangor – Administrative Consent Agreement (BRWM)
7. A-QUALITY REMOVAL, INC., Springvale – Administrative Consent Agreement (BRWM)

## **III. Regular Agenda**

1. PINNACLE PARTNERS OF SABLE OAKES (appeal by Sablegolf, LLC and Sablots, LLC)  
The Board voted (5-2-0-2) on a motion to deny the appeal of Sablots LLC and Sablegolf, LLC and approve the proposed draft board order with the following modification:

Paragraph 6A.

... acceptable to the Bank, ~~it is the Bank's intent to fund~~ will consider an application to fund a construction loan in the approximate amount...

The vote was taken pursuant to 38 M.R.S.A. Section 341-D, 480-A et seq, and 481 et. seq and 06-096 CMR Chapter 2.

*Board members Ernest Hilton, Nancy Anderson, Katharine Littlefield, Richard Wardwell and Nancy Ziegler supported the motion. Board members Jean T. Wilkinson and Matt Scott opposed. Board members Irving Faunce and Virginia Plummer were absent. There is one vacancy.*

2. CHAPTER 425, ASBESTOS MANAGEMENT REGULATION / AMENDMENT (post to public comment)

The Board voted (7-0-0-2) on a motion to post amendments to Chapter 425, Asbestos Management Regulation to public comment, as presented to include the additional amendments contained in the Errata Sheet dated December 4, 2003 and to establish January 20, 2004, as the deadline for submittal of written public comment. The vote was taken pursuant to 38 M.R.S.A. section 341-D and 1271 et. seq..

Board members Ernest Hilton, Nancy Anderson, Katharine Littlefield, Richard Wardwell, Nancy Ziegler, Jean T. Wilkinson and Matt Scott voted to support the motion. Board members Irving Faunce and Virginia Plummer were absent. There is one vacancy.

3. CHAPTER 127, NEW MOTOR VEHICLE EMISSION STANDARDS REGULATION / AMENDMENTS (post to public hearing)

The Board voted (6-0-0-3) on a motion to post to public hearing the amendments to Chapter 127, New Motor Vehicle Emission Standards Regulation at a date, time and location to be determined by staff. The vote was taken pursuant to 38 M.R.S.A. Sections 585, 585-A and 585-D and 5 M.R.S.A. Section 8055.

*Board members Ernest Hilton, Nancy Anderson, Katharine Littlefield, Richard Wardwell, Jean T. Wilkinson and Matt Scott voted to support the motion. Board members Irving Faunce, Virginia Plummer and Nancy Ziegler were absent. There is one vacancy.*

4. CHAPTER 124, TOTAL REDUCED SULFUR CONTROL FROM KRAFT PULP MILLS / AMENDMENTS (post to public hearing)

The Board voted (6-0-0-3) on a motion to post to public hearing the amendments to Chapter 124 Total Reduced Sulfur Control from Kraft Pulp Mills at a date, time and location to be determined by staff. The vote was taken pursuant to 38 M.R.S.A. sections 341-D and 585, 585-A and 585-B.

*Board members Ernest Hilton, Nancy Anderson, Katharine Littlefield, Richard Wardwell, Jean T. Wilkinson and Matt Scott voted to support the motion. Board members Irving Faunce, Virginia Plummer and Nancy Ziegler were absent. There is one vacancy.*